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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

UNITED STATES OF AMERICA)

Plaintiff,)

V)

Ricardo McHORNE, et al.,)

Defendant.)

CASE NO. 00-6311-CR-HUCK

MOTION IN LIMINE
TO EXCLUDE Fed. R. Crim. P. 404(b) MATERIAL
AS TO PRIOR CONVICTION

COMES NOW the Defendant, Ricardo McHORNE, by and through undersigned counsel, and moves this Honorable Court to exclude any mention of the Defendant's prior convictions or bad acts not associated with the instant charged offense.

Federal Rule of Evidence 404(b), provides that "(e)vidence of other crimes, wrongs, or acts is not admissible ...". Under Rule 404, evidence of a person's character is not admissible for the purpose of proving the character of a person in order to show action in conformity therewith.

The introduction of any prior convictions and or associations with contraband represents substantial and undue prejudice, they have no relevance to

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the arrest and trial of the Defendant in this case and should be deemed impermissible as evidence, because the prejudicial effect on a jury would certainly be great. Federal Rule of Evidence 403 provides that 404(b) evidence should be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury...." The introduction of any prior convictions and or associations with contraband represents substantial and undue prejudice, they have no relevance to the arrest and trial of the Defendant in this case and should be deemed impermissible as evidence as the prejudicial effect on a jury would certainly be great. The court is not to admit rule 404(b) evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury...." Fed.R.Evid. 403.

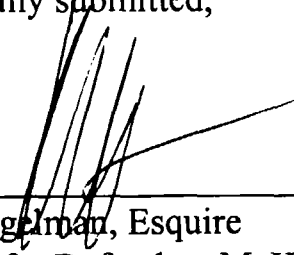
Evidence of criminal activity other than the charged offense is admissible for purposes of Rule 404(b) if it: 'pertain[s] to the chain of events explaining the context, motive and set-up of the crime [and is] linked in time and circumstances with the charged crime, or forms an integral and natural part of the crime, or is necessary to complete the story of the crime for the jury.' (United States v. Van Dorn, 925 F.2d 1331, 1338 (11th Cir.1991)).

CONCLUSION

Any prior acts here to be excluded do not comport with this framework, and as they are irrelevant and unduly prejudicial they should therefore should be excluded from any proceedings.

The undersigned counsel certifies that he has conferred with Assistant U.S. Attorney MICHAEL DITTO, opposing counsel, in a good faith effort to resolve by agreement the subject matter of this Motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion was mailed this February 12, 2001 to the following:

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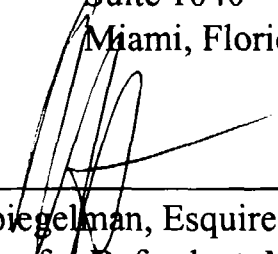
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